

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KIRK DAHL, et al.,

Plaintiffs,

v.

BAIN CAPITAL PARTNERS, LLC, et al.,

Defendants.

No. 1:07-cv-12388-WGY

**MOTION TO STRIKE PLAINTIFFS' EXPERT DISCLOSURES
BY DEFENDANTS TC GROUP III, L.P. AND TC GROUP IV, L.P.**

Pursuant to Federal Rules of Civil Procedure 26(a)(2) and 37(c)(1), the Court's January 7, 2014 Case Management Order (Dkt. 965), and Local Rule 7.1, defendants TC Group III, L.P. and TC Group IV, L.P. (collectively, "Carlyle") respectfully move to strike plaintiffs' August 1, 2014 expert disclosures. As set forth in more detail in the accompanying memorandum of law, the grounds for this motion are as follows: plaintiffs' disclosure identifies five witnesses, Drs. Simon J. Wilkie, Michael A. Williams, John M. Connor, Robert C. Marshall, and Micah S. Officer, that it intends to rely upon as experts at the upcoming trial in this case. Plaintiffs' disclosure, however, was accompanied by only a single expert report co-authored by Drs. Wilkie and Williams. No expert reports from Drs. Connor, Marshall, or Officer accompanied the disclosure; instead, plaintiffs referred Carlyle to five separate reports submitted by these witnesses in connection with plaintiffs' opposition to motions for summary judgment or their motion for class certification. These prior reports provide Carlyle with no notice as to what

opinions Drs. Connor, Marshall, or Officer will offer if called *at trial*. In addition, the Wilkie/Williams report plaintiffs did disclose does not provide a complete statement of the opinions that each of its authors intends to express at trial. The single report fails to delineate which opinions Dr. Wilkie—as opposed to Dr. Williams—intends to testify to, thereby violating Rule 26(a)(2)(B)’s requirement that an expert provide a complete report of all opinions he or she intends to offer at trial. Plaintiffs’ August 1, 2014 disclosure therefore violates the Court’s Case Management Order and Federal Rule of Civil Procedure 26(a)(2)(B)’s requirements regarding expert reports, and under Federal Rule of Civil Procedure 37(c)(1), should be stricken.

WHEREFORE, for all of the above-stated reasons, Carlyle respectfully requests that the Court grant this motion and:

- (i) Strike plaintiffs’ expert disclosure with respect to Drs. Connor, Marshall, and Officer for violating Federal Rule of Civil Procedure 26(a)(2)(B) and preclude plaintiffs from relying on the testimony of these experts at trial; and
- (ii) Strike plaintiffs’ expert disclosure with respect to Drs. Wilkie and Williams for violating Federal Rule of Civil Procedure 26(a)(2)(B) and preclude plaintiffs from relying on the testimony of these experts at trial; or alternatively, direct plaintiffs to choose the one witnesses (either Dr. Wilkie or Dr. Williams) that they intend to call at trial, and limit the expert chosen by plaintiffs to the opinions specifically offered in the expert report that was provided; and
- (iii) Such other and further relief as this Court deems just and appropriate.

Dated: August 12, 2014

Respectfully Submitted,

/s/ Margaret M. Zwisler

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certifies that Carlyle's counsel has conferred with plaintiffs' counsel and has attempted in good faith to resolve or narrow the issues involved in this motion but was unable to do so.

/s/ Margaret M. Zwisler
Margaret M. Zwisler (admitted *pro hac vice*)

CERTIFICATE OF SERVICE

I, Margaret M. Zwisler, hereby certify that the foregoing Defendants TC Group III, L.P. and TC Group IV, L.P.'s Motion to Strike Plaintiffs' Expert Disclosures was served upon the attorneys of record for each party by transmission through the Court's electronic case filing system.

Dated: August 12, 2014

/s/ Margaret M. Zwisler

Margaret M. Zwisler (admitted *pro hac vice*)